



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Brower Company, Inc.

File: B-228145

Date: September 23, 1987

DIGEST

Where a protest against the exclusion of the protester's proposal from the competitive range was filed more than 5 weeks after the protester learned of the rejection of its proposal, the protest is untimely even though the new president of the protesting company may not have known of the earlier rejection until after acquiring the company from its previous owner.

DECISION

Brower Company, Inc. (Brower), protests the rejection of its offer under request for proposals (RFP) No. FCNO-J7-2026-N-4-14-87 issued by the General Services Administration (GSA) for traditional, executive wood office furniture. GSA determined Brower's offer to be technically unacceptable and excluded it from the competitive range because Brower had not acknowledged receipt of amendments Nos. 1 and 2 of the solicitation.

The protest is dismissed.

Brower states that it did sign and return the amendments through the regular mail to GSA, and that GSA either lost or misplaced the documents. Brower has submitted correspondence it had with GSA as follows: GSA's July 15, 1987, letter to Brower informing it that Brower was technically unacceptable because it failed to acknowledge receipt of amendments Nos. 1 and 2; Brower's reply to GSA dated July 20 in which Brower states it did acknowledge receipt of amendments Nos. 1 and 2; GSA's response of July 31, to Brower in which GSA acknowledges receiving amendment No. 2, but not amendments Nos. 1 or 3. In the latter letter, which was received and date stamped by Brower on August 3, GSA again stated that Brower's offer was rejected.

Brower states that the above correspondence shows that GSA must have received amendment No. 1, since GSA in its second letter acknowledged receiving amendment No. 2. Brower

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states that amendment No. 3 was not required. The current president of Brower also states that he purchased Brower from the previous owner 2 days prior to filing this protest and would like a chance to compete on the solicitation.

Our Bid Protest Regulations require that protests shall be filed not later than 10 days after the basis of protest is known or should have been known, whichever, is earlier. 4 C.F.R. § 21.2(a)(2) (1987). Brower received GSA's final letter rejecting its offer on August 3, 1987. Accordingly, its protest received in this Office on September 10, more than 5 weeks after the date it had notice of its basis for protest, is untimely.

We point out that while the current president of Brower may not have known of GSA's rejection of Brower's offer until after he bought the company, the protest is in Brower's name and Brower's own documentation shows that officials of Brower had notice on August 3 of GSA's rejection of its proposal. The company, as offeror and protester, is therefore untimely. See Engineers International, Inc.--Reconsideration, B-219760.2, Aug. 23, 1985, 85-2 C.P.D. ¶ 225, in which we held that the fact that the protester's president was overseas and could not personally respond to the agency's decision that its offer was outside the competitive range and would not be considered further does not form an excuse to our timeliness requirements.

The protest is dismissed.



Robert M. Strong
Deputy Associate General Counsel